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In re Application of :
DAVIS *et al* :
Application No.: 10/522,515 :
PCT No.: PCT/US2003/024570 :
Filing Date: 06 August 2003 :
Priority Date: 07 August 2002 :
Attorney Docket No.: DOL08801 US :
For: AUDIO CHANNEL SPATIAL :
TRANSLATION :

DECISION

This is a decision on the "Response to Decision on Petition" filed March 3, 2009 which is treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

The present nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

- (1) the reference required by 35 U.S.C. § 120, § 119(e) and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that: (1) a reference was provided in an amendment stating the proper relationship of the prior-filed international application to the provisional application. The amendment is in compliance with 37 CFR 1.121 and is acceptable; (2) the surcharge fee required by 37 CFR 1.17(t) has been previously paid; and (3) the required statement was provided.

Accordingly, having found that the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt accompanies this decision on petition.

This matter is being referred to Technology Center Art Unit 2614 for appropriate action on the amendment filed March 3, 2009.

Any questions concerning this decision may be directed to James Thomson at (571) 272-3302.



Bryan Lin
Legal Examiner
Office of PCT Legal Administration